IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5973 of 2000

with

SPECIAL CIVIL APPLICATION No 5449 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT MAZDOOR PANCHAYAT

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5973 of 2000
   MRS SANGEETA N PAHWA for Petitioner No. 1
   DS AFF.NOT FILED (R) for Respondent No. 1
   MR SV RAJU for Respondent No. 2-3
   NOTICE SERVED BY DS for Respondent No. 2-3
   RULE SERVED BY DS for Respondent No. 4-5
2. Special Civil Application No. 5449 of 2000
   MRS SANGEETA N PAHWA for Petitioner No. 1
   MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/09/2001

ORAL JUDGEMENT

1. Amendment is granted.

2. The petitioner in Special Civil Application No.5973 of 2000, i.e. Gujarat Mazdoor Panchayat, has prayed for necessary direction against the respondent No.2-Airport Authority of India Limited, to treat the employees, whose names are mentioned at Annexure `A', to be the employees of the respondent No.2 and accordingly, they should be treated as regular employees of the respondent No.2. The very petitioner has filed another petition, being Special Civil Application No.5449 of 2000. During the pendency of these petitions, the petitioners have submitted draft amendments in both the petitions. By the said amendment, it is stated that the work, which these employees are doing, is of a perennial nature and the contract labour is merely a camouflage and the same is sham and bogus. By way of amendment, additional prayer is sought for, to the effect that the concerned workmen, mentioned at Annexure `A', should be treated as regular workmen of the respondent No.2-Authority.

3. At the time of hearing of these petitions, Mrs. Pahwa, learned Advocate for the petitioners, submitted that contract labour is merely sham and bogus and that the members of the petitioner-Union are doing perennial work of the respondent No.2-authority. She further submitted that even though the contractors are being changed from time to time, the concerned employees remain the same and that shows that they are doing perennial work and only in order to deprive them of certain benefits, they are shown to have been appointed through the Contractor.

4. Mr.Raju, appearing for respondent No.2, on the other hand, has argued that the work in question is not of perennial nature and since this work can be performed through contractor, as and when necessity arises, the respondent No.2 is giving contract labour for doing the aforesaid work. He submitted that the contract labour is not sham and bogus.

5. After hearing both the sides, I am of the opinion that the disputed questions of fact involved herein cannot be decided in a petition filed under Article 226 of the Constitution of India. There are serious disputed

questions of fact which are involved in this petition. This Court is, therefore, not the proper forum, wherein such grievances can be ventilated. The appropriate authority to decide such dispute is the Authority under the Industrial Disputes Act and such other Forum under the Labour Laws. In view of the aforesaid circumstances, this petition cannot be entertained.

6. At this stage, Mrs.Pahwa, for the petitioners, states that the petitioners would like to approach the appropriate authority under the Industrial Disputes Act as well as the Contract Labour (Regulation & Abolition) Act for the prayer that the work in question is of a perennial nature and that the Contract labour is required to be abolished. Permission to approach the appropriate authority, as stated above, is granted. The petitioner-Union is, therefore, permitted to raise appropriate Industrial Dispute. The petitioner-Union is also permitted to raise the issue of abolition of contract labour. It is clarified that this Court has not expressed any opinion on the merits of the case and it is for the competent authority to adjudicate the same after considering the evidence which might be led by both the sides before the Authority.

The petitioners and the concerned workmen are allowed to approach the Conciliation Officer / Officers, who is having jurisdiction over the subject matter of dispute regarding their demands. They can approach the Officer within a period of two months from today. On the petitioners approaching the Conciliation Officer, after giving notice to the employer, the concerned Officer shall ascertain the relevant facts and try to settle the dispute by negotiations with the workmen, their Union and principal employer through its authorized representative. The conciliation proceedings shall be completed within a period of three months from the date of approach by the Union / workmen. In case the settlement is not possible, failure report shall be submitted within the aforesaid period, as indicated above, to the appropriate Government.

The appropriate Government shall, within a period of two months from the date of receipt of the Failure Report, if any, of the Conciliation Officer, refer industrial dispute under Section 10 of the Industrial Disputes Act to the appropriate Industrial / Labour Court.

In the event of such dispute being referred under Section 10 of the I.D. Act to the concerned Court /

Labour Court / Tribunal, the concerned Court shall make all endeavours to make a final Award in the proceedings within a period of six months from the date of receipt of the Reference.

It is argued on behalf of the petitioners that the existing status quo may be continued. Mr.Raju for the respondent No.2 states that since there is no privity of contract between the respondent No.2 and its employees, no interim relief can be granted against the respondent No.2. In the facts of these cases and without treating the present order as a precedent, the Contractor is directed not to terminate the services of the concerned employees till appropriate Government makes reference to the appropriate Court and till the aforesaid dispute is finally adjudicated. It is clarified that there is no interim relief granted against the respondent No.2, but it is granted only against the contractor in the facts and circumstances of these cases, as indicated above. This interim order is given in view of the fact that the petitions are pending since long and since there is already an interim relief in existence for a considerable time. It is clarified that the appropriate Court, before whom the matter is placed, shall not, in any way, be guided by the order passed by this Court and the matter is required to be dealt with by the Court on its own merits and without in any way being influenced by the interim order granted by this Court. It is also clarified that if employment of any employee is required to be terminated on any other ground, like misconduct etc., this order will not come in the way of such contractor and their services can be terminated in accordance with law. Similarly, if he wants to take any disciplinary action against the concerned workmen, this order will not come in his way. It is also clarified that this Court has not expressed any opinion on the merits of the aforesaid issue as it is for the aforesaid authority to take decision on his own and as per the evidence which might be led by the parties.

Mrs. Pahwa, learned Advocate for the petitioners, states that till the proceedings are finally concluded, the concerned workmen should be allowed to be continued and the respondent No.2 may be directed not to terminate their services. However, since it is in dispute whether the concerned workmen are workmen of respondent No.2 or genuine workmen of the Contractor, relief prayed for by Mrs. Pahwa cannot be granted. In the facts and circumstances of the case, it is directed that as long as the contract with the present contractor subsists, the contractor may not terminate the services

of the concerned workmen till the aforesaid dispute is finally adjudicated. Mr.Raju, however, stated that the respondent No.2 may not continue the said contract further and they may not appoint another contractor because the Management may continue the said work through their own workmen. If that is so, naturally, the interim direction given hereinabove will not operate thereafter. However, it is clarified that as long as the present contractor continues, the said contractor is directed to employ the existing workmen, who are at present discharging their services through the said Contractor. Since in view of the stand of the respondent No.2, they are not likely to replace the existing contractor by a new contractor, it is not necessary to give any further direction to the effect that as and when the new contractor is appointed, he will continue the existing employees in his service. In view of the facts stated above, it is not necessary to give any further direction. However, if any such eventuality arises, it is open for the petitioners to apply for necessary direction from the concerned Court. At this stage, it is not required to give any direction on that point except giving direction to the existing contractor to continue the existing workmen.

The judgment relied on by Mrs. Pahwa in Food Corporation of India Workers' Union v. Food Corporation of India, 2001 (1) G.L.H. 90, which, according to her, is confirmed by the Division Bench, is not applicable to the facts of the present case. In the facts and circumstances of that case, necessary direction was given by the learned single Judge to the effect that even if new contractor is appointed, he will continue the existing employees. However, in view of the stand of the respondent No.2 to the effect that they are not likely to replace the existing contractor with new contractor, it is not necessary to give further direction on that line. In any case, it will even be open for the petitioners to ask for appropriate relief from the appropriate authority, before whom the dispute might be pending at the relevant time. Suffice it to say that in view of the statement of Mr.Raju that they are not likely to replace the existing contractor with a new contractor and even if the engagement of the present contractor is not extended further, they are not likely to give the work to a new contractor, it is not necessary to give any further direction to the effect that even if new contractor is appointed, he will continue the existing workmen in his service. This order is restricted to the existing contractor only and accordingly, the said Contractor will continue to employ the existing workmen in his service.

With these observations, the petitions are disposed of. Rule is discharged with no order as to costs.

17th September, 2001 (P.B. Majmudar, J.)

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(apj)